

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1462 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF BHIKHALAL P-

ASHOK BHIKHALAL PARMAR

Versus

SAVITABEN KANJI

Appearance:

MR SURESH M SHAH for Petitioner
MR RR TRIVEDI for Respondent No. 1
MR DU SHAH for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 31/08/2000

ORAL JUDGEMENT

This Civil Revision Application has been preferred against the judgment and decree passed by the Assistant Judge, Rajkot District at Gondal, in Regular Civil Appeal No.132 of 1983.

2. Brief facts of the case are as under :

The present respondent Nos. 1 and 2 who are the original landlords of the petitioner had filed Civil Suit No.176/81 into the Court of learned J.M.F.C., Gondal, stating that the suit property is of the ownership of plaintiffs, that the plaintiff No.1 is the owner of the property and plaintiff No.2 has been given power of attorney to manage the affairs of the property. In the suit the plaintiffs further stated that the defendant filed standard rent application being Civil Misc. Application No.48/76 in respect of the suit property and on 1-4-81, with the consent of the parties, the Court fixed the standard rent at Rs.45/- per month. It is further contended that the tenancy month commenced from 1st of English month ; that the defendant did not deposit the standard rent as determined by the Court in the previous proceedings and he is in arrears of rent even now. In the suit, the plaintiffs further contended that the defendants are in arrears of rent from 1-9-80 to 30-4-81 i.e. for a period of 8 months and Rs.325/- has accrued towards rent and for which notice dated 21-5-81 was served on the defendant by R.P.A.D. demanding the said amount and by that notice possession of the suit premises was also sought, but the defendant has not tendered the rent within a period of one month from the date of receipt of notice nor the notice is complied with ; that the standard rent of the suit premises is fixed and, therefore, the plaintiffs have prayed for decree for recovery of rent of arrears and also vacant possession of the suit premises and for money decree towards rent and monetary claim for rent as well as damages for the use of suit premises for the period preceding the suit till during the pendency of the suit. After recording the evidence, the trial Court held that the defendants are in arrears of rent for more than 6 months as alleged and that the notice is valid and contractual rent is the standard rent and that the matter is governed by Section 12 (3) (a) of the Bombay Rent Act and decreed the suit of the plaintiffs as prayed for in the plaint.

3. Against that the petitioners-tenants preferred Regular Civil Appeal No.123 of 1983 into the Court of learned Assistant Judge, Rajkot District at Gondal and after hearing the learned advocates of the respective parties, the learned Assistant Judge, Rajkot District at Gondal had dismissed the appeal with costs and confirmed the judgment and decree passed by the trial Court in Regular Civil Suit No.176/81. Against those two concurrent findings of the courts below, the present

Civil Revision Application has been preferred by the petitioners.

4. During the pendency of this Civil Revision Application, the petitioner-tenant Bhikhalal Popatbhai died and heirs of the deceased Bhikhalal Popatbhai filed Civil Application 1354/89 for joining them as heirs and vide order dated 19-9-89 the heirs of the deceased Bhikhalal Popatbhai brought on record. During the pendency of this Civil Revision Application, respondents Nos.3 and 4 namely Vora Haji Taiyabali Amijibhai and Asmabai Haji Taiyabali filed once Civil Application No.4343 of 1993 wherein they have prayed that they may be joined as respondent Nos.3 and 4 on the ground that they have purchased the property in question from the respondent Nos.1 and 2 during the pendency of this Civil Revision Application by way of a registered sale deed in consideration of Rs.39,195/- which includes the consideration for actionable claim including claim for possession and arrears of rent against the petitioners in so far he is in possession of the suit premises. The said application came to be allowed by the Court (Coram : K.R.Vyas, J.) on 13-10-93 and Vora Haji Taiyabali Amijibhai and Asmabai Haji Taiyabali have been joined as respondent Nos.3 and 4 in this Civil Revision Application. Thereafter, during the pendency of this Civil Revision Application, respondent No.3 Vora Haji Taiyabali Amijibhai also died and, therefore, learned advocate for the respondent No.3 Shri D.U.Shah filed Civil Application No.3322/2000 for joining heirs of respondent No.3. and the Court (Coram : P.B.Majmudar, J.) vide order dated 5-5-2000 allowed the said application and heirs of respondent No.3 have been brought on record as respondent Nos.3/1 to 3/10 and learned advocate of the heirs of the deceased Mr. D.U.Shah has also filed vakalatnama.

5. I have heard Mr.S.M.Shah, learned advocate for the petitioners, learned advocate Mr. Manish R.Raval, for Mr.R.R.Trivedi for respondent No.1 and Mr. D.U.Shah, learned advocate for heirs of respondent No.3. Learned advocate for the petitioners has mainly raised the contention that the petitioners-original tenants were never in arrears of rent. He has further argued that even at the time of issuing the notice also the petitioners-tenants were not in arrears of rent. He has drawn my attention towards the finding given by the Court below more particularly paragraph 40 and 41 of the judgment and argued that as per the above judgment, the Court has come to the conclusion that the tenant in all deposited Rs.3,000/- and argued further that if it is so,

then in any circumstances of the matter, the present petitioners-tenants were never in arrears of rent and also not in arrears of rent on the date of notice.

6. I have carefully gone through the above referred paragraph 40 and 41 of the judgment and also the notice Exh.54, dated 21-5-81 and other documentary evidence and calculation which have been shown to me by learned counsel for the petitioner. So, as per the suit notice Exh.54 dated 21-5-81 wherein respondent Nos. 1 and 2-original plaintiffs have categorically stated that the petitioners are in arrears of rent from 1-9-80 to 30-4-81 and according to him they are in arrears of rent for 8 months i.e. to the tune of Rs.3,025/-. As per the finding, the petitioners have paid rent at the rate of Rs.38/- per month up to 31-1-76, but thereafter no rent paid to the plaintiffs in person and rent was deposited in the Court in standard rent application in Regular Civil Suit No.176/81 and as calculated by both the Courts as per the receipt which is mentioned in paragraph 14, in all petitioners have deposited Rs.3,000/- into the Court towards rent and the rental claim of the plaintiffs is from 1-2-76 to 31-3-81 i.e. 62 months and if we multiply 62 months with Rs.40 /- which is standard rent per month, the amount would come to Rs.2,480/- and petitioner has issued notice dated 21-5-81 and by way of that notice he demanded rent up to 30-4-81 and, therefore, if we add one month's standard rent at the rate of Rs.45/-, the amount would come to Rs.2,525/- (Rs.2,480/- plus Rs.45/-), whereas as per paragraph 40, the petitioners have deposited Rs.3,000/- by way of rent into the standard rent application. So, even as per the calculation done by both the Courts below and as per the amount deposited by the petitioner, the petitioners were not in arrears of rent at all on the date of issuing notice dated 21-5-81. On the contrary, on the date of notice i.e. on 21-5-81, the petitioners were in plus to the tune of Rs.475/- and, therefore, it is nothing, but calculation mistake on part of both the Courts below. Therefore, the notice dated 21-5-81 is not valid because on the date of the notice, the petitioners were not in arrears of rent. The findings of both the Courts below based on calculation, but there is mistake in the said calculation and which has given rise to this Civil Revision Application. I have gone through the calculation made by both the Courts below. Even learned advocate appearing for the other side failed to show that there is no calculation mistake and also failed to satisfy this Court that the petitioners were in arrears of rent on the date of notice dated 21-5-81.

7. As a result of the foregoing discussion, this Civil Revision Application is allowed. The judgment and decree passed by the learned 2nd Joint Civil Judge (J.D.), Gondal, in Regular Civil Suit No.176 of 1981 and the judgment and decree passed by the learned Assistant Judge, Rajkot District at Gondal in Regular Civil Appeal No.132 of 1983 are hereby quashed and set aside. Rule made absolute with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai